

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KAT ALICE FORD, )  
Plaintiff, ) No. CV-09-0098-JPH  
v. ) ORDER GRANTING DEFENDANT'S  
MICHAEL J. ASTRUE, Commissioner ) MOTION FOR SUMMARY JUDGMENT  
of Social Security, )  
Defendant. )

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on February 5, 2010 (Ct. Recs. 16, 18). Attorney Maureen J. Rosette represents plaintiff; Special Assistant United States Attorney L. Jamala Edwards represents the Commissioner of Social Security ("Commissioner"). The parties have consented to proceed before a magistrate judge (Ct. Rec. 8). On January 27, 2010, plaintiff filed a reply (Ct. Rec. 20). After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 18) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 16).

## JURISDICTION

Plaintiff<sup>1</sup> protectively filed concurrent applications for disability insurance benefits (DIB) and supplemental security

<sup>1</sup>Plaintiff is also referred to as Karen Ford, Kat Alice Ford, and Karen Van Voorhis (her married name) throughout the record (See e.g., Tr. 194,232). In 2005 she changed her name to Kat Alice Ford (Tr. 207).

1 income (SSI) on August 23, 2006, alleging onset due to bipolar  
 2 disorder, depression and attention-deficit hyperactivity disorder  
 3 (ADHD) as of December 1, 2003 (Tr. 109-113,128). Plaintiff was  
 4 insured through December 31, 2008 (Tr. 10). Her applications were  
 5 denied initially and on reconsideration (Tr. 82-85,88-91).

6 A hearing was held June 11, 2008, before Administrative Law  
 7 Judge (ALJ) R.S. Chester. Plaintiff, represented by counsel, and  
 8 vocational expert K. Diane Cramer testified (Tr. 22-77). On July  
 9 8, 2008, the ALJ issued his decision (Tr. 10-19) finding although  
 10 plaintiff could not perform past work, she could perform other  
 11 work existing in the national economy. Accordingly, he found Ms.  
 12 Ford not disabled as defined by the Act (Tr. 19). On March 6,  
 13 2009, the Appeals Council denied review (Tr. 1-3). Therefore, the  
 14 ALJ's decision became the final decision of the Commissioner,  
 15 which is appealable to the district court pursuant to 42 U.S.C. §  
 16 405(g). Plaintiff filed this action for judicial review pursuant  
 17 to 42 U.S.C. § 405(g) on March 30, 2009 (Ct. Recs. 1,4).

#### **STATEMENT OF FACTS**

19 The facts have been presented in the administrative hearing  
 20 transcript, the ALJ's decision, the briefs of both parties, and  
 21 are summarized here.

22 Plaintiff was 49 years old on the date of the ALJ's decision.  
 23 She has a GED (Tr. 109,135). Ms. Ford has worked as a bookkeeper,  
 24 tax preparer, plant nursery manager, cashier, bartender, and she  
 25 has sold cars (Tr. 18,29,31,38,42,44,146). She alleges disability  
 26 onset as of December 1, 2003, due to bipolar disorder, depression,  
 27 and attention deficit hyperactivity disorder (ADHD)(Tr. 45-46).

28 Plaintiff's sole contention on appeal is the weight the ALJ

1 gave evidence of her psychological limitations.

2                   **SEQUENTIAL EVALUATION PROCESS**

3                   The Social Security Act (the "Act") defines "disability"  
4 as the "inability to engage in any substantial gainful activity by  
5 reason of any medically determinable physical or mental impairment  
6 which can be expected to result in death or which has lasted or  
7 can be expected to last for a continuous period of not less than  
8 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The  
9 Act also provides that a Plaintiff shall be determined to be under  
10 a disability only if any impairments are of such severity that a  
11 plaintiff is not only unable to do previous work but cannot,  
12 considering plaintiff's age, education and work experiences,  
13 engage in any other substantial gainful work which exists in the  
14 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).  
15 Thus, the definition of disability consists of both medical and  
16 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
17 (9<sup>th</sup> Cir. 2001).

18                  The Commissioner has established a five-step sequential  
19 evaluation process for determining whether a person is disabled.  
20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person  
21 is engaged in substantial gainful activities. If so, benefits are  
22 denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If  
23 not, the decision maker proceeds to step two, which determines  
24 whether plaintiff has a medically severe impairment or combination  
25 of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),  
26 416.920(a)(4)(ii).

27                  If plaintiff does not have a severe impairment or combination  
28 of impairments, the disability claim is denied. If the impairment

1 is severe, the evaluation proceeds to the third step, which  
2 compares plaintiff's impairment with a number of listed  
3 impairments acknowledged by the Commissioner to be so severe as to  
4 preclude substantial gainful activity. 20 C.F.R. §§  
5 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P  
6 App. 1. If the impairment meets or equals one of the listed  
7 impairments, plaintiff is conclusively presumed to be disabled.  
8 If the impairment is not one conclusively presumed to be  
9 disabling, the evaluation proceeds to the fourth step, which  
10 determines whether the impairment prevents plaintiff from  
11 performing work which was performed in the past. If a plaintiff  
12 is able to perform previous work, that Plaintiff is deemed not  
13 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).  
14 At this step, plaintiff's residual functional capacity ("RFC")  
15 assessment is considered. If plaintiff cannot perform this work,  
16 the fifth and final step in the process determines whether  
17 plaintiff is able to perform other work in the national economy in  
18 view of plaintiff's residual functional capacity, age, education  
19 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
20 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

21 The initial burden of proof rests upon plaintiff to establish  
22 a *prima facie* case of entitlement to disability benefits.

23 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v.*  
24 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
25 met once plaintiff establishes that a physical or mental  
impairment prevents the performance of previous work. The burden  
then shifts, at step five, to the Commissioner to show that (1)  
plaintiff can perform other substantial gainful activity and (2) a

1 "significant number of jobs exist in the national economy" which  
 2 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup>  
 3 Cir. 1984).

#### 4 STANDARD OF REVIEW

5 Congress has provided a limited scope of judicial review of a  
 6 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold  
 7 the Commissioner's decision, made through an ALJ, when the  
 8 determination is not based on legal error and is supported by  
 9 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995  
 10 (9<sup>th</sup> Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir.  
 11 1999). "The [Commissioner's] determination that a plaintiff is  
 12 not disabled will be upheld if the findings of fact are supported  
 13 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572  
 14 (9<sup>th</sup> Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence  
 15 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d  
 16 1112, 1119 n. 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance.  
 17 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989);  
 18 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d  
 19 573, 576 (9<sup>th</sup> Cir. 1988). Substantial evidence "means such  
 20 evidence as a reasonable mind might accept as adequate to support  
 21 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)  
 22 (citations omitted). "[S]uch inferences and conclusions as the  
 23 [Commissioner] may reasonably draw from the evidence" will also be  
 24 upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965).  
 25 On review, the Court considers the record as a whole, not just the  
 26 evidence supporting the decision of the Commissioner. *Weetman v.*  
 27 *Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989) (quoting *Kornock v.*  
 28 *Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

1 It is the role of the trier of fact, not this Court, to  
2 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
3 evidence supports more than one rational interpretation, the Court  
4 may not substitute its judgment for that of the Commissioner.  
5 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
6 (9<sup>th</sup> Cir. 1984). Nevertheless, a decision supported by  
7 substantial evidence will still be set aside if the proper legal  
8 standards were not applied in weighing the evidence and making the  
9 decision. *Brawner v. Secretary of Health and Human Services*, 839  
10 F.2d 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial  
11 evidence to support the administrative findings, or if there is  
12 conflicting evidence that will support a finding of either  
13 disability or nondisability, the finding of the Commissioner is  
14 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir.  
15 1987).

## **ALJ'S FINDINGS**

The ALJ found plaintiff was insured for DIB purposes through December 31, 2008 (Tr. 10). At step one, he found she did not engage in substantial gainful activity after onset on December 1, 2003 (Tr. 12). At steps two and three, he found Ms. Ford suffers from bipolar disorder, depression, and ADHD, impairments that are severe but which do not alone or combination meet or medically equal a Listing impairment (Tr. 12-13). The ALJ found plaintiff less than completely credible (Tr. 15). At step four, relying on the VE, he found with plaintiff's RFC for a range of light work she is unable to perform her past work (Tr. 18). At step five, again relying on the VE, the ALJ found plaintiff could perform other jobs, such as mail clerk, charge account clerk, and

1 surveillance system monitor (Tr. 19). Ms. Ford was found not  
2 disabled as defined by the Social Security Act because there is  
3 work she can perform (Tr. 19).

4 **ISSUES**

5 Plaintiff contends the Commissioner erred as a matter of law  
6 by failing to properly credit the opinions of the evaluating and  
7 reviewing psychologists, specifically, opinions that she is at  
8 least moderately limited in concentration, pace, maintaining a  
9 regular schedule, and social functioning (Ct. Rec. 17 at 13-19).  
10 The Commissioner asserts because the ALJ's decision is both  
11 supported by the evidence and free of error, the Court should  
12 affirm (Ct. Rec. 19 at 6-12).

13 **DISCUSSION**

14 **A. Standards for weighing medical evidence**

15 In social security proceedings, the claimant must prove the  
16 existence of a physical or mental impairment by providing medical  
17 evidence consisting of signs, symptoms, and laboratory findings;  
18 the claimant's own statement of symptoms alone will not suffice.  
19 20 C.F.R. § 416.908. The effects of all symptoms must be  
20 evaluated on the basis of a medically determinable impairment  
21 which can be shown to be the cause of the symptoms. 20 C.F.R. §  
22 416.929. Once medical evidence of an underlying impairment has  
23 been shown, medical findings are not required to support the  
24 alleged severity of symptoms. *Bunnell v. Sullivan*, 947, F. 2d  
25 341, 345 (9<sup>th</sup> Cr. 1991).

26 A treating physician's opinion is given special weight  
27 because of familiarity with the claimant and the claimant's  
28 physical condition. *Fair v. Bowen*, 885 F. 2d 597, 604-05 (9<sup>th</sup>

1 Cir. 1989). However, the treating physician's opinion is not  
 2 "necessarily conclusive as to either a physical condition or the  
 3 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,  
 4 751 (9<sup>th</sup> Cir. 1989) (citations omitted). More weight is given to  
 5 a treating physician than an examining physician. *Lester v.*  
 6 *Cater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1996). Correspondingly, more  
 7 weight is given to the opinions of treating and examining  
 8 physicians than to nonexamining physicians. *Benecke v. Barnhart*,  
 9 379 F. 3d 587, 592 (9<sup>th</sup> Cir. 2004). If the treating or examining  
 10 physician's opinions are not contradicted, they can be rejected  
 11 only with clear and convincing reasons. *Lester*, 81 F. 3d at 830.  
 12 If contradicted, the ALJ may reject an opinion if he states  
 13 specific, legitimate reasons that are supported by substantial  
 14 evidence. See *Flaten v. Secretary of Health and Human Serv.*, 44  
 15 F. 3d 1435, 1463 (9<sup>th</sup> Cir. 1995).

16 In addition to the testimony of a nonexamining medical  
 17 advisor, the ALJ must have other evidence to support a decision to  
 18 reject the opinion of a treating physician, such as laboratory  
 19 test results, contrary reports from examining physicians, and  
 20 testimony from the claimant that was inconsistent with the  
 21 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,  
 22 751-52 (9<sup>th</sup> Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9<sup>th</sup>  
 23 Cir. 1995).

24 **B. Dr. Everhart's December 2006 evaluation**

25 Plaintiff alleges the ALJ erred when he found she is limited  
 26 to occasional public contact and performing no more than two-step  
 27 tasks. She alleges his RFC erroneously fails to credit  
 28 limitations assessed by examining psychologists Joyce Everhart,

1 Ph.D., and Dennis Pollack, Ph.D., as well as those of Sean Mee,  
 2 Ph.D., an agency reviewing psychologist. Plaintiff asserts if the  
 3 ALJ properly credited these opinions, she would be found disabled  
 4 (Ct. Rec. 17 at 13-19).

5 Ms. Ford first asserts the ALJ should have found her at least  
 6 moderately limited in the ability to complete a normal workday and  
 7 workweek and second, he should have found she would "have  
 8 difficulty" with persistence and maintaining attention, as Drs.  
 9 Everhart and Pollack opined. Similarly, plaintiff asserts the ALJ  
 10 should have accepted Dr. Mee's opinion she would benefit from  
 11 "some flexibility with schedule demands" (Ct. Rec. 17 at 18).  
 12 According to the Commissioner, the ALJ properly considered Ms.  
 13 Ford's credibility and the opinions of treating sources when he  
 14 assessed psychological limitations. The Commissioner opines the  
 15 ALJ rejected limitations unsupported by the record (Ct. Rec. 19 at  
 16 8-10).

17 Dr. Everhart conducted her evaluation on December 6, 2006,  
 18 three years after onset (Tr. 200-206). The ALJ points out:

19 [plaintiff's] clinical tests and the claimant's self- report  
 20 during [the] consultative examination reveal  
 21 [her] symptoms are not as disabling as [she] alleged during  
 22 the hearing. During the consultive examination,  
 23 the claimant was administered the Hamilton Rating  
 Scale for Depression. [She] scored in the mildly  
 depressed level. Furthermore, the examiner, Dr. Joyce  
 Everhart, Ph.D., noted, based on the claimant's self-  
 report, [her] bipolar and ADHD symptoms were well-  
 controlled with medication.

24 . . . Dr. Everhart administered the Trails Making Test,  
 25 the results of which showed no problems with executive  
 26 functioning, and the mental status examination revealed  
 27 the claimant's attention, concentration and intellectual  
 ability appear to be within normal limits (Exhibit  
 2F/4-5 at Tr. 203-204).

28 (Tr. 16).

1       Dr. Everhart opined plaintiff's pace was good, she was  
 2 friendly, cooperative, and able to get along with bosses and  
 3 coworkers. She predicted plaintiff is likely to have problems  
 4 with complex multi-step tasks when "somewhat manic or very  
 5 depressed" and persistence and attendance are likely "adversely  
 6 affected by symptoms of bipolar disorder" (Tr. 204).

7       When he assessed psychological limitations, the ALJ  
 8 appropriately relied on Dr. Everhart's test results that showed  
 9 mild depression, and on plaintiff's admission her bipolar and ADHD  
 10 symptoms were well-controlled with medication. Impairments that  
 11 can be controlled effectively with medication are not disabling  
 12 for the purpose of determining eligibility for benefits. *Warre v.*  
 13 *Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9<sup>th</sup> Cir. 2006).  
 14 An ALJ may consider medical records of improvement when evaluating  
 15 a claimant's credibility. *Morgan v. Comm. of Soc. Sec. Admin.*,  
 16 169 F.3d 595, 599-600 (9<sup>th</sup> Cir. 1999).

17       As noted below, the ALJ's credibility assessment further  
 18 supports the weight he gave portions of Dr. Everhart's opinion.  
 19 These reasons are specific, legitimate and fully support the ALJ's  
 20 decision to reject Dr. Everhart's contradicted opinion that  
 21 plaintiff suffers more severe limitations with respect to  
 22 persistence and attendance. The ALJ adopted Dr. Everhart's  
 23 opinion plaintiff is able to complete repetitive two-step tasks,  
 24 and he assessed limitation greater than Dr. Everhart by limiting  
 25 Ms. Ford to no more than occasional contact with the public  
 26 (compare Tr. 14 with Tr. 204).

27 **C. Dr. Pollack's May 2008 evaluation**

28       In May of 2008, Dr. Pollack's tests showed Ms. Ford's full  
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1 scale IQ is in the high average range, as the ALJ observes (Tr.  
2 16, referring to Exhibit 9F/5). When he weighed the conflicting  
3 evidence of psychological limitations, the ALJ points out  
4 plaintiff testified she reads one science fiction book a week (Tr.  
5 16, referring to Tr. 59), indicating concentration is not severely  
6 impaired. He notes Ms. Ford's testimony did not include  
7 complaints of significant problems with concentration,  
8 persistence, and pace. He relies on plaintiff's admission ADHD  
9 symptoms are controlled with medication and do "not cause much  
10 problem[s] with concentration" (Tr. 16, citing Exhibits  
11 2F/1,7F/10). Plaintiff reported improvement in anxiety within  
12 weeks of starting medication. The ALJ notes she did not attend  
13 treatment for a year, and when she returned, Ms. Ford reported her  
14 mood had been stable (Tr. 15, referring to Exhibits 1F/4,6;  
15 3F/3,5). The ALJ notes Dr. Everhart's testing showed normal  
16 attention and concentration, and both Everhart and Pollack  
17 assessed normal intellectual ability with no problems in executive  
18 functioning (Tr. 16, referring to Exhibits 2F/4-5; 9F/5).

19 Significantly, Dr. Pollack noted Ms. Ford's test results  
20 showed "a tendency to overstate her difficulties," although he  
21 deemed the results valid (Tr. 397). The ALJ rejected Dr.  
22 Pollock's assessed marked limitations in performing within a  
23 schedule and completing a normal workday, and his assessed  
24 moderate limitation in attention and concentration for extended  
25 periods (Tr. 16; 401). The ALJ opines "it is obvious from the  
26 medical records that the claimant's concentration, persistence,  
27 and pace is such that she is at least capable of performing work  
28 involving one to two step tasks" (Tr. 16). It is noteworthy that

1 the assessed RFC limits plaintiff's two step tasks to non-  
 2 production work (Tr. 71).

3 The ALJ relied on the opinions of mental health treatment  
 4 providers when he assessed plaintiff's limitations. Ms. Ford's  
 5 counseling discharge note in August of 2007 (about 16 months  
 6 before her last insured date) reveals, as the ALJ notes,

7 "continued improvement in [plaintiff's] mental health  
 8 . . . improvement with attention and organizational  
 9 skills with use of medications to manage ADHD. [Ms.  
 10 Ford] reported an increase in mindfulness and  
 11 consistent implementation of coping skills and  
 12 marked improvement in managing anxiety."

13 (Tr. 16, referring to Exhibit 6F/23).

14 The ALJ points out recent records show plaintiff continues  
 15 "to report feeling less depressed and is feeling good" and has  
 16 been "successful in working through her anxiety" (Tr. 16,  
 17 referring to Exhibit 7F).

18 Records prior to onset show no treatment for a period of four  
 19 years. Ms. Ford underwent counseling after her mother's death in  
 20 1999. She did not return until November of 2003, nine days before  
 21 onset. At that time Ms. Ford told providers she was successfully  
 22 treated for depression in the past with zoloft, an antidepressant.  
 23 A week after the prescription was restarted in 2003, plaintiff  
 24 reported feeling a little better, able to take phone calls, and  
 25 able to get out of bed. At onset her children were six and eight  
 26 years old (Tr. 196,198-199).

#### 27 **D. Reviewing agency psychologist Dr. Mee's opinion**

28 Contrary to plaintiff's assertion in her opening brief, the  
 29 ALJ specifically considered Dr. Mee's opinion (Tr. 14, referring  
 30 to Exhibit 5F at Tr. 270-290) plaintiff's bipolar symptoms are in  
 31 partial remission, ADHD symptoms are controlled by medication, and  
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1 she is moderately limited in social functioning and concentration  
2 (Tr. 271,273,280,284-286). Dr. Mee explains in his narrative  
3 report plaintiff can concentrate on simple routine tasks even  
4 during times of increased symptomology (Tr. 286).

5 Dr. Mee opines a stimulant such as the one prescribed for Ms.  
6 Ford's ADHD (adderall) mimics manic symptoms. As a result, these  
7 drugs are not indicated for people suffering from bipolar disorder  
8 and make an accurate bipolar diagnosis difficult (Tr. 282).  
9 [Treating psychiatrist Mcihale Wu, M.D., expressed the same  
10 concern in November of 2007, opining adderall is an agent  
11 "exacerbating [plaintiff's] bipolar symptoms" (Tr. 329).] Dr.  
12 Mee's narrative opines Ms. Ford's pressured presentation at times  
13 will "adversely affect social interactions" and result in some  
14 vulnerability to distraction." Periods of depression "will result  
15 in occasionally slower work pace" and in "occasional decreased  
16 attendance reliability" (Tr. 282). The ALJ points out his RFC  
17 generally comports with Dr. Mee's assessment (Tr. 14).

18 To aid in weighing the conflicting medical evidence, the ALJ  
19 evaluated plaintiff's credibility, a determination unchallenged on  
20 appeal. He notes Ms. Ford's activities are not limited to the  
21 extent one would expect given her complaints of disabling symptoms  
22 and limitations (Tr. 16-17). Daily activities during the relevant  
23 time have included making breakfast for her two children and  
24 taking them to school; shopping three times a week for groceries  
25 and other items; laundering clothes at a laundromat twice a month;  
26 cleaning house, and driving short distances (Tr. 17,139-142).

27 When evaluating medical opinions and a claimant's credibility  
28 as to limitations, the daily activities of caring for children are

1 relevant. See *Rollins v. Massanari*, 261 F.3d 853, 856 (9<sup>th</sup> Cir.  
2 2001)(rejecting medical opinion because proffered limitations were  
3 inconsistent with "the level of activity that Rollins engaged in  
4 by maintaining a household and raising two young children, with no  
5 significant assistance from her ex husband"). Similarly, Ms. Ford  
6 has cared for her children, ages 6 and 8 at onset, in a single-  
7 parent family Tr. 26-27,196).

8 The ALJ notes Ms. Ford's ability to function socially is  
9 shown by her ability to sing in two choirs. She has maintained  
10 friendships and contact with family. She was noted during  
11 examination to be "friendly and cooperative." And, the ALJ points  
12 out, there is no evidence of past problems with coworkers or  
13 supervisors (Tr. 16, referring to Exhibits 2F/3-5,3E/3, 8E/3,9F/4;  
14 Tr. 142,144). With respect to concentration, the ALJ observes  
15 plaintiff has generally been able to keep or timely counsel a host  
16 of appointments, indicating greater functioning than claimed. See  
17 e.g. Tr. 138 (tries to make counseling, DSHS and medical  
18 appointments) and Tr. 56 (testified missed 2 appointments but  
19 called and canceled because "I am able to do that").

20 The ALJ is correct that these activities are inconsistent  
21 with plaintiff's claimed disabling limitations, including being  
22 unable to leave the house and to get out of bed for weeks at a  
23 time. See e.g., (1) plaintiff says sleeps 20+ hours a day for 3-6  
24 days at a time (Tr. 139); (2) says doesn't get out of bed most  
25 days and sleeps 16-18 hours (Tr. 168-169); (3) says sleeps 90%  
of time (Tr. 172); (4) testified sleeps all day one and a half to  
27 two weeks a month (Tr. 63), and (5) indicates slept summer of 2006  
28 (Tr. 64).

1       Credibility determinations bear on evaluations of medical  
2 evidence when an ALJ is presented with conflicting medical  
3 opinions or inconsistency between a claimant's subjective  
4 complaints and diagnosed condition. See *Webb v. Barnhart*, 433  
5 F.3d 683, 688 (9<sup>th</sup> Cir. 2005).

6       It is the province of the ALJ to make credibility  
7 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir.  
8 1995). However, the ALJ's findings must be supported by specific  
9 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir.  
10 1990). Once the claimant produces medical evidence of an  
11 underlying medical impairment, the ALJ may not discredit testimony  
12 as to the severity of an impairment because it is unsupported by  
13 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir.  
14 1998). Absent affirmative evidence of malingering, the ALJ's  
15 reasons for rejecting the claimant's testimony must be "clear and  
16 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995).  
17 "General findings are insufficient: rather the ALJ must identify  
18 what testimony not credible and what evidence undermines the  
19 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*  
20 *Shalala*, 12 F. 3d 915, 918 (9<sup>th</sup> Cir. 1993).

21       The ALJ's reasons for finding plaintiff less than fully  
22 credible are clear, convincing, and fully supported by the record.  
23 See *Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9<sup>th</sup> Cir.  
24 2002) (proper factors include inconsistencies in plaintiff's  
25 statements, inconsistencies between statements and conduct, and  
26 extent of daily activities). Noncompliance with medical care or  
27 unexplained or inadequately explained reasons for failing to seek  
28 medical treatment also cast doubt on a claimant's subjective

1 complaints. 20 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885  
2 F.2d 597, 603 (9<sup>th</sup> Cir. 1989).

3 Plaintiff alleges the ALJ improperly rejected Drs. Everhart  
4 and Pollack's assessed limitations in the ability to maintain  
5 regular attendance and concentration for extended periods based on  
6 plaintiff's unreliable self-reports of sleeping hours and days at  
7 a time and not leaving her house (Ct. Rec. 17 at 16). She asserts  
8 because both examiners reviewed records and gave tests their  
9 opinions were not based on plaintiff's self-report (Ct. Rec. 17 at  
10 17).

11 The ALJ specifically credited plaintiff's psychological test  
12 results. To the extent the examiners' opinions are internally  
13 inconsistent, the ALJ adopted the objective findings, reasoning  
14 they must have assessed limitations greater than indicated by  
15 their own test results based on plaintiff's unreliable self-  
16 report. An ALJ may properly reject opinions based on a claimant's  
17 unreliable self-report. The ALJ is responsible for reviewing the  
18 evidence and resolving conflicts or ambiguities in testimony.

19 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989). It is the  
20 role of the trier of fact, not this court, to resolve conflicts in  
21 evidence. *Richardson*, 402 U.S. at 400.

22 Plaintiff alleges the ALJ erred when he relied on her ability  
23 to attend appointments regularly as evidence of her ability to  
24 maintain regular attendance, be punctual and regularly complete a  
25 normal workday (Ct. Rec. 17 at 16).

26 In the court's view, the ability is some evidence of the  
27 ability to maintain regular attendance, be punctual, and perhaps  
28 to a lesser extent, demonstrate the stamina needed to regularly

1 complete a normal eight hour work day. Plaintiff's ability to  
2 timely get her children up, fed, and to school demonstrates  
3 similar abilities. In the court's view the ALJ properly relied on  
4 the entire record when he assessed Ms. Ford's mental limitations.

5 To the extent the ALJ rejected Drs. Everhart and Pollack's  
6 contradicted opinions assessing greater psychological limitations,  
7 the ALJ's reasons are legitimate, specific, and supported by  
8 substantial evidence in the record. See *Lester v. Chater*, 81 F.3d  
9 821, 830-831 (9<sup>th</sup> Cir. 1995).

10 The court has a limited role in determining whether the ALJ's  
11 decision is supported by substantial evidence and may not  
12 substitute its own judgment for that of the ALJ, even if it might  
13 justifiably have reached a different result upon de novo review.  
14 42 U.S.C. § 405 (g).

15 The ALJ's reasons are both specific and legitimate, and  
16 supported by substantial evidence. His assessment of the  
17 evidence of mental impairment, and his unchallenged credibility  
18 assessment, are both supported by the record and free of legal  
19 error.

20 At steps two and three, the ALJ found plaintiff *did not have*  
21 marked or moderate limitations in the ability to 1) maintain  
22 attention and concentration, 2) complete a normal work day/week  
23 without interruptions from psychologically based symptoms, and 3)  
24 perform at a reasonably consistent pace without an unreasonable  
25 number and length of rest periods (Tr. 13-14). Prior to assessing  
26 Ms. Ford's RFC, he considered Dr. Mee's opinion and the rest of  
27 the record. The ALJ found "the more detailed assessment of  
28 functioning" prior to steps four and five led him to assess

1 moderate limitations in concentration and in social functioning.  
2 He translated these into an RFC with two mental limitations:  
3 perform no more than two-step tasks in non-production jobs and  
4 occasionally engage in public contact (Tr. 14). The ALJ included  
5 these limitations in his hypothetical to the VE at step five (Tr.  
6 71-73). The record, including plaintiff's activities, statements  
7 to professionals, objective test results, treatment records, and  
8 less than complete credibility, fully supports the ALJ's  
9 assessment.

10 The Court finds the RFC assessment is without error and  
11 supported by substantial evidence.

12 **CONCLUSION**

13 Having reviewed the record and the ALJ's conclusions, this  
14 Court finds the ALJ's decision is free of legal error and  
15 supported by substantial evidence..

16 **IT IS ORDERED:**

17 1. Defendant's Motion for Summary Judgment (**Ct. Rec. 18**) is  
18 **GRANTED.**

19 2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 16**) is  
20 **DENIED.**

21 The District Court Executive is directed to file this Order,  
22 provide copies to counsel for Plaintiff and Defendant, enter  
23 judgment in favor of Defendant, and **CLOSE** this file.

24 DATED this 8th day of April, 2010.

25  
26 s/ James P. Hutton

27 JAMES P. HUTTON  
28 UNITED STATES MAGISTRATE JUDGE